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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,265	03/10/2004	Michael J. Calleja	8625	5356

7590

08/18/2006

Robert Charles Hill  
235 Montgomery Street #821  
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EXAMINER
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NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,265	<b>Applicant(s)</b> CALLEJA, MICHAEL J.	
	<b>Examiner</b> Jared W. Newton	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***At the outset, please note that the prosecution of the present Application 10/797,265 has been transferred to the undersigned Examiner, Jared W. Newton. Any further correspondences should be addressed to the undersigned.***

#### **DETAILED ACTION**

This non-final rejection is in reply to the remarks dated March 8, 2006, by which claims 1, 3, and 9 were amended.

#### ***Claim Rejections - 35 USC § 112***

Claim 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 sets forth one or more "intermediate material-bay divider(s)" and depends from claim 11. Claim 11 however sets forth "at least two material-bay dividers". Hence, Claim 11 does not positively set forth or require one or more "intermediate" dividers, thus rendering Claim 12 indefinite because there is insufficient antecedent basis for "any intermediate ones of the material-bay dividers", and one would not know how to make or use a "means for lacing the restraining cable through" an element that is not positively required.

***Claim Rejections - 35 USC § 102***

Claims 1-2, 4-6, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (US Patent No. 4,981,225). Cole discloses a restraining cable and rack system featuring:

- a. A plurality of M-shaped material bay divider (M-shape formed by bracing members between posts 20 and 22).
- b. A vertical bar (30) attached to frontal lobes (20)
- c. A series of anchors in the vertical bar (43, 45)
- d. A restraining cable (48) spanning multiple bays (3 bays shown in figure 1, disposed between dividers described in "a" above)
- e. A means for attaching the cable to the vertical bar (eyebolt 46)
- f. A cantilever backing frame (22,28)

The cantilever frame is seen as comprising an upright member (22), an extension member (28), and a plurality of horizontal beams disposed between post 22 and lobe 20.

In regard to claim 12, Cole shows a means 46 for attaching said restraining cable to the vertical bars of outside ones of said dividers (see FIG. 1), and a means 43,45 for passing said cable through the vertical bars of the dividers.

***Claim Rejections - 35 USC § 103***

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over '255 to Cole as applied to claims 1 and 2 above, and further in view of US Patent No. 6,619,490 to the present Applicant, Calleja.

Cole discloses the rack system as set forth above, but does not disclose snap hooks for attaching said restraining cable to said vertical bar. Calleja discloses a rack netting system comprising vertical posts 402 and 404, and snap hooks, or carabiners 425-428 for attaching a net to said posts (see FIG. 4). The Cole and Calleja references are analogous art because they are from the same field of endeavor—safety rack systems. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the snap hook attachment mechanism as disclosed by Calleja to the cable assembly as disclosed by Cole, in order to provide a simple and easily releasable connection between the cable and the vertical bars of Cole. Cole discloses a cable as mountable to vertical bars by way of eyehooks, when are inserted through apertures. Eyehooks commonly comprise a threaded end, requiring tools for removal. Calleja discloses a means for attaching a flexible element such as a cable, cord, or net strand to a vertical post, and further discloses that said means is favorable and effective: "A particularly good curtain hook to use in these applications is a stainless-steel carabiner with a spring-operated gate, e.g., as is commonly used by boaters and mountain climbers for securing ropes" (see Calleja, Col. 3, Ln. 59-63). It follows that the inclusion of a snap hook or carabiner attached to the cable as disclosed by Cole would be an obvious and successful means of attaching said cable to said vertical bar.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over '255 to Cole as applied to claims 1 and 2 above, and further in view of US Patent No. 6,332,549 to MacDonald.

Cole discloses the rack system as set forth above, but does not disclose said vertical bar comprising a U-shaped channel to fit the divider post 20. MacDonald discloses a pallet rack system comprising square, tubular, or U-shaped uprights B and C (see Col. 4, Ln. 35-36), and a U-shaped clamp jaw 24 received on said uprights (see FIG. 1). The Cole and MacDonald references are analogous art because they are from the same field of endeavor—pallet rack systems. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the tubular vertical bar 30 and its extension 40 as disclosed by Cole of a U-shape, which is well-known and highly common in the art of pallet racks, and is disclosed by Macdonald as the structure of said uprights and clamp jaw. Cole discloses a pallet rack comprising vertical bar net supports 30 that are attached to and telescopically extend above the top of the rack uprights 20 (see FIG. 1). MacDonald discloses a similar means of attaching a vertical member to a rack upright, wherein the vertical member is U-shaped, thus providing a closer fit between said vertical member and said upright. It follows that it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the tubular vertical bar 30 as disclosed by Cole with a U-shaped vertical bar having side flanges extending to fit the side of rack uprights 20. Motivations for using a U-shaped bar are well established in the art of racks, and include: requiring less material and therefore less cost; providing a lighter structure; and allowing for access to the inner

surfaces of the upright. Further motivation for replacing the tubular bar as disclosed by Cole with the U-shaped bar as disclosed by MacDonald would be that as set forth by MacDonald—to provide a vertical member sized to and capable of receiving a rack upright (see Col. 5, Ln. 13-24).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over '255 to Cole as applied to claim 1 above, and further in view of US Patent No. 5,573,227 to Hemauer et al.

In regard to claim 8, Cole discloses the rack as set forth above, wherein said vertical bars comprise anchor points including apertures 45 formed in said bars. Cole does not specifically set forth the method of how said apertures were formed in said bars. Hemauer et al disclose a safety net apparatus comprising metal support posts 10 having bent arms 250, wherein said arms comprising holes 252 which are drilled through the flat metal (see Col. 4, Ln. 35-36). The Cole and Hemauer et al references are analogous art because they are from the same field of endeavor—net safety apparatuses. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the apertures as disclosed by Cole by drilling, which is well-known and highly common in the art of forming holes, and as is disclosed by Hemauer et al. Motivations for drilling a hole are also well established in the art of racks, and include: providing a uniformly round hole; providing a plurality of holes having equal diameters; and forming a hole quickly. Further motivation for drilling a hole is that as disclosed by

Hemauer et al.—to provide a hole that extends entirely through a piece of material (see Col. 4, Ln. 35-36).

### ***Response to Arguments***

In view of the Amendments filed March 8, 2006, the Claim Objections set forth in the Office Action mailed December 9, 2005 are hereby withdrawn.

In view of the Amendments filed March 8, 2006, the Claim Rejections under 35 U.S.C. 112 set forth in the Office Action mailed December 9, 2005 are hereby withdrawn.

The Applicant is thanked for his corrections.

Applicant's Remarks filed March 8, 2006, with respect to the 35 U.S.C. 102 rejections (anticipation by US Patent No. 4,981,225 to Cole) have been fully considered but they are not persuasive.

Applicant recites, "A close look at Cole reveals that the cables do not restrain anything" (see Pg. 5, Ln. 10-11), in an attempt to define the claimed subject matter by its relationship to unclaimed elements—restrained objects. Restrained objects are not part of the present invention, and it is improper to seek to define the claimed subject matter relative to unclaimed elements. It follows that the cable and rack system set forth by Cole need not specifically show said cable restraining some object; rather, the cable need only be capable of restraining an object stored on or in said rack. The rack to Cole supports pallets and the like, and prevents them from falling off the rear of said rack, thereby restraining said pallets and the objects stored thereon. In the instance that a



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large object stored on a pallet, such that said object extends above the height of the cable, tips off the edge of the rack, the cable will no doubt assist the net in restraining said object from falling. Thus, the cable as set forth by Cole is considered a "restraining cable".

Applicant further recites, "These cables are permanently attached to one anchor point" (see Pg. 5, Ln. 12-13) and "Cole does not have means for attaching the restraining cable to the vertical bar at one of a variety of restraining cable height adjustments..." (see Pg. 5, Ln. 18-19). On the contrary, Cole discloses the vertical bar 30 as set forth above, said bar comprising a plurality of apertures 43 and 45. Cole further discloses said cable as attached to said rack via an eyebolt 46 that is inserted through one of said apertures 45 of said vertical bar 30 (see Cole, Col. 3, Ln. 61-64). Nowhere in the disclosure of the Cole patent is there a mention or suggestion of a permanent attachment of said cable to said rack. Rather, the cables are attached via said eyebolt, which is secured through an aperture, defining a removable attachment. Further, the inclusion of multiple apertures along the length of said vertical bar provides for a variety of height adjustments for the restraining cable. The fact that the disclosed attachment location of the eyebolt is at the uppermost aperture does not preclude the eyebolt from being capable of attaching at other apertures along the length of the vertical bar.

Applicant further recites, "Cole also does not have a sequence of slots and holes in the series of anchor points that allow for a restraining cable to be attached to the vertical bar (dependent claim 4), or allow for an attachment device and the restraining

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cable to be passed through intermediate bay in the rack (dependent claim 5)" (see Pg. 6, Ln. 1-4). Cole sets forth a series of anchor points along said vertical bars 30, wherein said anchor points comprise said apertures 43 and 45, and wherein said apertures are defined as holes or slots extending through said bars 30. In regard to dependent claim 4, as set forth above, said anchor points allow for the restraining cable 48 to be attached to said vertical bar 30. In regard to dependent claim 5, neither an attachment device nor one or more intermediate bays are defined by the claims. The rack as set forth by Cole shows a plurality of longitudinally spaced pairs of front and rear upright support posts 20 and 22, wherein the space between each pair defines a "bay" for the storage of pallets etc. The arrangement of the abovementioned anchor points disposed along the vertical bars 30 allows for both the restraining cable 48 and an attachment device to be passed through intermediate bays in the rack system.

Applicant further recites, "While the Examiner states that Cole has an M-shape formed by bracing members between posts 20 and 22, it is very hard to see this shape in the reference... These bracing members simply do not function as a material-bay divider by any stretch of the imagination" (see Pg. 6, Ln. 5-10). As shown in Figure 1 of the Cole reference, the "M-shape" is formed by said bracing members, and the horizontally oriented rack members disposed between posts 20 and 22. As set forth in the preceding paragraph, a bay for the storage of pallets etc. is formed between each pair of said posts. It follows that said pairs divide the series of bays.

In regard to claim 9, the rack system disclosed by Cole comprises a series of bays as set forth above, and as shown in Figure 1 to Cole, said restraining cable 48 spans the series of bays.

In regard to claims 10-12, the Cole reference shows a bay-dividing structure at each end of said rack system as set forth above, and therefore at least two of said structures. Cole further shows a means capable of attaching the restraining cable to the vertical bars of outside ones of the material bay-dividers, and also shows apertures capable of allowing the cable to be laced there through.

In regard to claim 3, the Applicant stated, "You as the Examiner need to show the additional step of how this knowledge of the skill artisan leads to the suggestion or motivation" (see Remarks, Pg. 7, Ln. 3-4). A *Prima Facie* case of obviousness has been established for using a snap hook for attachment between a cable or cord-like structure and an upright. Demonstration of and motivation for using a snap hook was found in US Patent 6,619,490 to the present Applicant, Calleja as advanced above.

In regard to claims 7 and 8, the Examiner maintains the assertion in the Office Action mailed December 9, 2005 that it is obvious, well established, and well known in the art to use U-shaped uprights in place of tubular uprights, or vice versa; and that it is obvious to form an aperture in a piece of metal by drilling or punching the aperture. Such functional equivalents do not carry patentable weight, and are reasonable and logical substitutes having well established motivations set forth for their use. "The rationale to modify or combine the prior art does not have to be expressly stated in the

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prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). However, in an attempt to obviate any doubts that may exist that there would not be motivation to replace a tubular upright with a U-shaped upright, or to form a hole in a piece of metal by drilling or punching, the Examiner has established a *Prima Facie* case of obviousness for doing each, as advanced above.

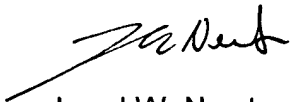
It is noted that after performing a thorough search of the prior art, the Examiner has determined that there may exist patentable subject matter within the present Application; however, the current claims do not specifically point to said subject matter, as they rely on general terms and descriptions open to broad reasonable interpretation. If the Applicant feels that speaking with the undersigned Examiner, Jared W. Newton, will expedite the prosecution of the instant Application, he is encouraged to contact the Examiner.

### **Conclusion**

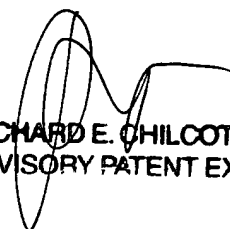
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jared W. Newton  
August 10, 2006  
JWN



RICHARD E. CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER